IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL TRANSFER PETITION NO. 28/2006
(Bajrang Lal Pareekh V/s State of Rajasthan & Ors.)

Date of Order : 30/08/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S. Saruparia, for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. S.S.Dhillon for the respondents No.2 to 6.

BY THE COURT:-

By the instant criminal transfer petition under Section 407 Cr.P.C., the petitioner first informant seeks transfer of Sessions Case No. 01/06 (51/07) pending in the Court of Additional Sessions Judge (Fast Track), Nohar, district Hanumangarh, to any other Sessions Court at Jaipur.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant transfer petition are that on a crime report registered at Police Station-Nohar, district Hanumangarh on 22.10.2005, the police investigated the matter and filed challan against the respondents

No. 2 to 6 for the offences under Sections 302, 498-A, 120-B and 201 IPC in the Court of Additional Chief Judicial Magistrate, Nohar. The case being exclusively triable by a Court of Sessions, was committed to the Court of Additional Sessions Judge (Fast Track), Nohar (for short 'the trial court' hereinafter). The facts emerging from the material available on record are that a murder of Anita wife of accused respondent No.2 Brij Prakash was committed by the accused respondents No. 2 to 6 by entering into a criminal conspiracy and thereafter caused disappearance of the evidence in a murder case. The material eye witness of the occurrence is PW-6 Vijay Laxmi @ Timtim aged about 10 years, daughter of the deceased and the respondent No.2 Brij Prakash. The manner in which the murder was committed after entering into a criminal conspiracy by the accused respondents and the fact that the sole eye witness, the daughter of the accused respondent No.2 and the deceased having been threatened by the accused not to make statement against them, the complainant who is maternal grand father of material sole eye witness Vijay Laxmi @ Timtim seeks transfer of the case from the trial court to any Court at Jaipur solely on the ground that the principal witness Vijay Laxmi @ Timtim has been threatened not to make statement against the accused respondents else she will be murdered and therefore, there is danger to her life if she appears before the trial court at Nohar.

Learned counsel appearing for the accused respondents submits that the principal witness Vijay Laxmi @ Timtim has already appeared before the trial court as PW-6 on 17.8.2007 and made the statement. He has placed on record the copy of the statement of witness PW-6 Vijay Laxmi @ Timtim.

On careful perusal of the statement of witness PW-6, it appears that despite there being a threat to her, she made the statement consistent to the prosecution story. After recording the statement of the witness in examination-in-chief, the accused respondents were afforded opportunity to cross-examine the witness, but despite ample opportunity, neither the accused respondents nor their counsel cross-examined the witness and sought adjournment requesting to defer the cross-examination of the witness only on the ground that they do not wish that their advocate Mr. Dharam Chand Sharma should cross-examine the witness. The accused respondents therefore, neither allowed their counsel Mr. Dharam Chand Sharma to cross-examine the witness nor they themselves cross-examined the witness. The trial court noticed this fact and made a note in the statement of witness that after making the statement of the witness in examination-in-chief, the witness PW-6 Vijay Laxmi @ Timtim made a statement to the Court that she has been

threatened not to make statement in the Court else she will be murdered. An application was also moved before the trial court by the complainant first informant stating therein that the witness PW-6 has come from Khetdi, district Jhunjhunu and accused respondents and their knowns have been threatening the witness not to make statement against them and there is threat to the life of the witness. It has also been stated that earlier also the witness appeared for making statement before the trial court but the Presiding Officer was on leave and therefore, her statement could not be recorded on earlier occasion. The witness is a minor girl of 10 years and therefore, cross-examination be not deferred and if the accused persons wish to cross-examine the witness, the witness is available in the witness-box. Noticing this, the trial court, asked the accused Brij Prakash and other co-accused, if they wish, they may cross-examine the witness present in Court, however, the accused who were present in Court declined to cross-examine the witness and thus neither the accused respondents nor their counsel cross-examined the witness and faced with this situation, the trial court closed the cross-examination by the accused respondents.

Keeping in view the fact that the sole eye witness of a murder case, a minor girl of 10 years, has appeared and made statement against the accused respondents and despite ample

opportunity having been provided to the accused respondents and their counsel, they declined to cross-examine the witness, this fortifies the statement of the witness that she has been threatened by the accused respondents not to make statement against them else she will be murdered and under such circumstances, in my view, the trial court was justified in observing that the witness was under threat by the accused respondents and closing the cross-examination of the accused after having failed to avail the opportunity of cross-examination by the accused respondents and their counsel.

From the statement of the witness, it appears that the witness PW-6 Vijay Laxmi @ Timtim, aged about 10 years has already made the statement before the trial court in consonance with the prosecution story and her cross-examination by accused respondents has been closed and therefore, the witness is not required to appear any further before the trial court at Nohar, district Hanumangarh.

In this view of the matter, when the principal eye witness alleged to have been threatened to her life has already made statement as PW-6 before the trial court and is not required to come again and appear before the trial court since her statement is complete and cross-examination on being

declined by the accused respondents and their counsel has been closed, the very ground seeking transfer of the case now does not exist. In the circumstances, therefore, when the ground on which the transfer is sought does not survive, the petition deserves to be dismissed.

Consequently, the instant criminal transfer petition stands dismissed.

(H.R.PANWAR),J.

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